Quazite Corporation *and* Oil, Chemical and Atomic Workers International Union, AFL–CIO, Local 3–987. Cases 10–CA–25383, 10–CA–25449, 10–CA–25485, 10–CA–25867, and 10–CA–26320–2

April 23, 1997

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On December 21, 1994, the National Labor Relations Board issued its Decision and Order in this proceeding finding that the Respondent had engaged in certain unfair labor practices violating Section 8(a)(1) and (5) of the Act.[1] Based on these violations, the Board adopted, without further comment, the judge's finding that the Respondent further violated Section 8(a)(5) of the Act by withdrawing recognition from the Union. The Board ordered, as part of the remedy imposed, that the Respondent immediately rescind its withdrawal of recognition from the Union and that the Respondent bargain with the Union as the exclusive collective-bargaining representative of the unit employees for 1 year from the outset of such bargaining.

On April 14, 1995, the Respondent filed a petition for review of the Board's Order with the United States Court of Appeals for the District of Columbia Circuit. Thereafter, on May 3, 1995, the General Counsel submitted a cross-application for enforcement of the Board's Order.

On June 28, 1996, the court issued its decision in this case enforcing in part and remanding in part the Board's Order.[2] Although the court affirmed the Board's findings regarding the 8(a)(1) and (5) violations that the Respondent committed before it withdrew recognition from the Union, the court declined to enforce the Board's finding that the Respondent's withdrawal of recognition had violated Section 8(a)(5), and it declined to enforce the Board's bargaining order. Rather, the court remanded the case to the Board to explain and substantiate its conclusion that the unremedied unfair labor practices had undermined employee support for the Union to such an extent that the Respondent's withdrawal of recognition was unlawful.

On September 26, 1996, the Board informed the parties that it was accepting the court's remand and invited the parties to file statements of position on the issues raised by the remand. The General Counsel and the Respondent filed statements of position.

After considering the issue of the Respondent's withdrawal of recognition in light of the court's remand and the parties' statements of position, we conclude, on further reflection, that the Respondent did not violate Section 8(a)(5) by engaging in this conduct. We find on the particular facts of this case that there was an insufficient nexus between the Respondent's unlawful conduct and the individual petitions the employees signed stating that they no longer desired union representation to establish that the violations found here tended to cause the employees' dissatisfaction with the Union.

Briefly, the facts show that the Respondent and the Union had a collective-bargaining agreement that was effective from June 1990 until December 1991. The parties began negotiations for a successor agreement in November 1991 and continued to bargain until March 1992, when they ceased bargaining without reaching an agreement. All but two of the unfair labor practices the Respondent committed occurred by January 1992.[3] In June, the Union called a strike that lasted until August. During the strike, the Respondent violated Section 8(a)(1) of the Act when one of its supervisors separately told two striking unit employees that they would be subjected to harsh working conditions if they returned to work. From mid-to-late July, 37 of the 68 bargaining unit employees signed individual cards stating that they no longer wanted the Union to represent them. On August 4, the Respondent withdrew recognition from the Union based on this evidence.

After the parties' collective-bargaining agreement expired, the Union was entitled to a presumption that it continued to possess majority status.[4] The Respondent was free to rebut this presumption and withdraw recognition if it could establish that "either (1) the [U]nion did not *in fact* enjoy majority support, or (2) the [Respondent] had a 'good faith' doubt, founded on a sufficient objective basis, of the [U]nion's majority support." *NLRB v. Curtin Matheson Scientific*, 494 U.S. 775, 778 (1990) (emphasis in original). The Board, however, has long held that an employer is not free to withdraw recognition from a union while there are pending unfair labor practices which are unremedied.[5] At the same time, the Board has found that not every unfair labor practice will be of the character that taints the employer's withdrawal of recognition.[6] As the Board recently stated in *Lee Lumber & Building Material Corp.*, 322 NLRB 175 (1996):

> in cases involving unfair labor practices other than a general refusal to recognize and bargain, there must be specific proof of a causal relationship between the unfair labor practice and the ensuing events indicating a loss of support [footnote omitted].

[1] 315 NLRB 1068.

[2] 87 F.3d 493 (D.C. Cir.)

[3] All subsequent dates are in 1992, unless otherwise noted.

[4] *Guerdon Industries*, 218 NLRB 658, 659 (1975).

[5] *Olson Bodies*, 206 NLRB 779, 780 (1973).

[6] *Master Slack Corp.*, 271 NLRB 78, 84 (1984); *Guerdon Industries*, supra.

We find that, in the circumstances here, the prestrike unfair labor practices the Respondent committed were too remote in time to have caused the employees' later disaffection with the Union in July. In so concluding, we note that these violations ended by January and that the parties continued to begain for 2 more months until March. We also stress the judge's finding in this case that the Respondent did not engage in bad-faith bargaining during these contract negotiations.[7] Thus, we do not find that these violations occurring before negotiations ended tainted the Respondent's withdrawal of recognition in early August.

Regarding the two additional unfair labor practices that the Respondent committed during the strike, the evidence shows that its supervisor threatened to retaliate against two strikers if they returned to work. We find that this 8(a)(1) conduct, although serious in nature, was isolated, particularly since it involved employees who, at the time, were not working at the Respondent's facility. We also note that the two affected employees were not among those employees who signed the petitions showing loss of majority support and that there is no evidence these threats were disseminated to other employees. For these reasons, we conclude that these threats to two employees who were on strike did not constitute the kind of unfair labor practices that would have likely caused the Union's loss of majority support. Thus, applying the test of *Master Slack*, supra, we find, on the particular facts here, that the Respondent's misconduct did not taint the employees' petitions and that, therefore, the Respondent lawfully withdrew recognition from the Union based on its good-faith doubt that the Union had lost majority support.[8] Accordingly, we shall modify our earlier Conclusions of Law and provide a new remedy, order, and notice deleting our prior decision's requirements that the Respondent rescind its withdrawal of recognition from the Union and that the Respondent continue to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.[9]

AMENDED CONCLUSIONS OF LAW

1. Delete Conclusion of Law 7(e) from the judge's decision.

2. Insert the following as Conclusion of Law 8(c):

"(c) Withdrawing recognition from the Union."

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall require that the Respondent cease and desist from this conduct and take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to allow the Union's president, Thomas Lawson, to view his own attendance record and to furnish the Union with the attendance records of bargaining unit employees after the removal of personal data, other than that relating to absences, from the record of employee Sharon Vinroe who has been the subject of personal harassment by union representatives. We shall further direct that the Respondent immediately process the grievance of employees Anthony Johnson and Daniel Meadow and inform the employees and the Union in writing that it will do so. Finally, we shall require the Respondent to make whole the assembly employees for any loss of grinding incentive pay they may have suffered as a result of the Respondent's unfair labor practices as computed in the manner prescribed by *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[10]

ORDER

The National Labor Relations Board orders that the Respondent, Quazite Corporation, Lenoir City, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Denying employees' request for union representation during investigatory meeting which could lead to discipline.

(b) Promising its employees benefits if they resign from the Oil, Chemical and Atomic Workers International Union, AFL–CIO, Local 3–987.

(c) Promising its employees that disciplinary warnings issued to them would be removed from their files if they resign from the Union.

(d) Promising its employees that they would receive money if they resign from the Union.

(e) Threatening its employees with reprisals if they return to work after having engaged in a strike.

(f) Refusing to furnish the Union with the attendance records of nonunion employees in the bargaining unit, which are necessary and relevant to the Union's bargaining obligations.

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[7] The General Counsel did not except to the judge's dismissal of this 8(a)(5) allegation.

[8] This does not necessarily mean that we will find that employers have lawfully withdrawn recognition in subsequent cases where they have committed unfair labor practices which are similarly removed in time from the evidence showing the employees' disaffection with the union. Rather, each case must be assessed on its own facts and merits.

[9] We shall also modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[10] Under *New Horizons*, interest is computed at the "short term Federal Rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

(g) Refusing to allow the Union's representative, Union President Thomas Lawson, to view his own attendance records.

(h) Bypassing the Union by holding grievance meetings directly with bargaining unit employees and refusing the Union's request for further processing of the grievances.

(i) Unilaterally instituting changes in its past practice by eliminating grinding incentive pay to assemblers performing grinding work without notifying the Union.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, furnish the Union with the attendance records of its nonunion employees in the bargaining unit, after first removing any personal data from the attendance record of employee Sharon Vinroe other than that information relating to her attendance.

(b) Immediately permit Thomas Lawson to view his attendance records and furnish him with a copy of those records on his request.

(c) Immediately process the grievance of employees Anthony Johnson and Daniel Meadows and inform the employees and the Union in writing that it will do so.

(d) Make whole, with interest, the assembly employees for any loss of pay they suffered as a result of the Respondent's unilateral change by eliminating grinding incentive pay to assemblers performing that work.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Lenoir City, Tennessee facility copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 19, 1991.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT deny our employees' request for union representation during investigatory meetings which could lead to discipline.

WE WILL NOT promise our employees benefits if they resign from the Oil, Chemical and Atomic Workers International Union, AFL–CIO, Local 3–987.

WE WILL NOT promise our employees that disciplinary warnings issued to them would be removed from their files if they resign from the Union.

WE WILL NOT promise our employees that they will receive money if they resign from the Union.

WE WILL NOT threaten our employees with reprisals if they return to work after having engaged in a strike.

WE WILL NOT refuse to furnish the Union with the attendance records of nonunion employees in the bargaining unit, which are necessary and relevant to the Union's bargaining obligations.

WE WILL NOT refuse to allow the Union's representative, Union President Thomas Lawson, to view his own attendance records.

WE WILL NOT bypass the Union by holding grievance meetings directly with bargaining unit employees and refuse the Union's request for further processing of the grievances.

WE WILL NOT unilaterally institute changes on our past practice by eliminating grinding incentive pay to

assemblers performing that work without notifying the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, furnish the Union with the attendance records of its nonunion employees in the bargaining unit, after first removing any personal data from the attendance record of employee Sharon Vinroe other than that information relating to her attendance.

WE WILL immediately permit Thomas Lawson to view his attendance records and furnish him with a copy of those records on his request.

WE WILL immediately process the grievance of employees Anthony Johnson and Daniel Meadows and inform the employees and the Union in writing that it will do so.

WE WILL make whole, with interest, the assembly employees for any loss of pay they suffered as a result of our unilateral change by eliminating grinding incentive pay to assemblers performing that work.

QUAZITE CORPORATION